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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

Nos. 678 and 679

GEORGE E. CRANDALL,

Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA.

PETITION FOR WRITS OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

H. EUGENE GARDNER,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

Nos. 678 and 679

GEORGE E. CRANDALL,

vs. *Petitioner,*

COMMONWEALTH OF PENNSYLVANIA.

PETITION FOR WRITS OF CERTIORARI.

To the Honorable the Supreme Court of the United States:

Your petitioner, George E. Crandall, respectfully shows:

1a. That the above cases are criminal actions brought against him charging him with practicing medicine without a license from the Commonwealth of Pennsylvania, and charging him with operating a private hospital and a private nursing home without a license from the Commonwealth of Pennsylvania.

1b. That he was indicted on August 28, 1940, and brought to trial by jury and convicted on August 30, 1940, and sentenced on January 18, 1941, to sixty days in jail, a $1,000 fine and costs of prosecution amounting to possibly $500.

1c. That from the foregoing sentences he appealed to the Superior Court of the Commonwealth of Pennsylvania on the ground that he had been convicted without due process

of law and in denial of his rights to the equal protection of the law and contrary to his rights under Amendment XIV, Section 1, to the Constitution of the United States of America, reading in part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*"

1d. That one of the two cases referred to above involves an attempt to apply an Act of Assembly relating to the licensing of private nursing homes and private hospitals to the operation of an institution known as a health school—thus construing a State law so as to apply the same to subject matter which it was not intended to apply to. The Act of Assembly referred to is the Act of June 12, 1931, P. L. 510, of the Commonwealth of Pennsylvania, which reads in Section 1 thereof:

> "Be it enacted, &c., That after the effective date of this act, it shall be unlawful for any person, copartnership, association or corporation to operate for profit, within this Commonwealth a private nursing home or private hospital, for persons requiring care, treatment, or nursing by reason of sickness, injury, infirmity, or other disability, without a license as hereinafter required, but this act shall not be construed to apply to any State or State-aided institution or any institution licensed by the Department of Welfare under other statutes."

1e. That the other of the two cases referred to above involves an attempt to make the use of the degree M. D., obtained from a medical school chartered by another State, the practice of medicine or the holding out to practice medicine in the State of Pennsylvania. The Act of Assembly referred to is the Act of June 3, 1911, P. L. 639-649, as

amended July 25, 1913, P. L. 1220; April 30, 1921, P. L. 158; July 12, 1935, P. L. 703; July 19, 1935, P. L. 1329 and May 20, 1937, P. L. 725, which reads in Section 1 thereof:

> "Be it enacted, &c., That on and after January first, nineteen hundred and twelve, it shall not be lawful for any person in the State of Pennsylvania to engage in the practice of medicine and surgery, or to hold himself or herself forth as a practitioner in medicine and surgery, or to assume the title of doctor of medicine and surgery or doctor of any specific disease or diagnose diseases or to treat diseases by the uses of medicine and surgery, or to sign any death certificate or to hold himself or herself forth as able to do so, excepting those hereinafter exempted, unless he or she has first fulfilled the requirements of this act and has received a certificate of licensure from the State Board of Medical Education and Licensure created by this act, which license shall be properly recorded in the office of the Superintendent of Public Instruction at Harrisburg."
>
> "Section 13. The provisions of this act shall not apply either directly or indirectly, by intent or purpose, to affect the practice of pharmacy * * * nor to effect the practice of dentistry * * * *nor to effect the practice of osteopathy.*"

1f. The aforesaid laws of Pennsylvania, construed as aforesaid, operate in such fashion as to deprive your petitioner of his rights under Federal and State Constitutions as hereinbefore and hereinafter referred to, including his right to practice surgery under his osteopathic license, and his right to use M. D. granted by a school chartered in another State just as L. L. B. may be used elsewhere than in the State where granted.

1g. That the Superior Court of the Commonwealth of Pennsylvania affirmed the decisions of the Quarter Sessions Court of York County, Pennsylvania, on June 30, 1941, and thereafter your petitioner presented a petition to the Su-

preme Court of Pennsylvania to allow appeals in both cases from the Superior Court of Pennsylvania, but the Supreme Court of Pennsylvania refused to allow the appeals as follows:

"September 24, 1941: Petition refused. Per Curiam."

1h. That the record in the case has been returned to the Quarter Sessions Court of York County, Pennsylvania, where it is now lodged for execution of that Court's sentences.

1i. That your petitioner files this petition for Writs of Certiorari in both of the above cases directed to the Superior Court of Pennsylvania to certify the record in both said cases for examination by Your Honorable Court and for determination of the questions hereinbefore and hereinafter raised by your petitioner.

1. That your petitioner is a citizen of the United States of America, and a resident and citizen of the Commonwealth of Pennsylvania, his place of residence being located on the Lincoln Highway between Lancaster, Pennsylvania, and York, Pennsylvania, his address being R. F. D. No. 7, Lincoln Highway, York, Pennsylvania.

2. That your petitioner is an osteopathic physician and duly licensed as such by the Commonwealth of Pennsylvania for more than thirty years and president of Dr. Crandall's Health School, Inc., a Pennsylvania Corporation, which operates Dr. Crandall's Health School on the Lincoln Highway near York, Pennsylvania, where persons are taught how to preserve and improve their health by correcting their way of living and by the use of natural means and without the use of drugs.

3. That your petitioner has been located as aforesaid and practised as aforesaid for the past 20 years and more, and

during that time and down to the present time, there has been no change in his method for preserving and restoring health nor has he at any time during those 20 years and more and down to the present time, used or advocated the use of drugs or the methods employed in the practice of *materia medica* although he holds the degree of M.D. from a medical school incorporated by the State of Illinois and partly from the use of which he was wrongly charged with practicing medicine.

4. That your petitioner has been very successful in preserving and restoring the health of many persons not only in Pennsylvania but from all over the United States and from abroad by teaching them how to correct their way of living and how to preserve and restore their health by natural means, including many persons prominent in the public life of the State and Nation, and in so doing, he has prospered to a marked extent.

5. That the aforesaid institution and the activity of your petitioner thereat was inspected by persons employed by the Commonwealth of Pennsylvania, from time to time during the period of years aforesaid, and it was not until recent years when certain persons sought to avoid their financial obligations to your petitioner and one or more persons sought to obtain money from your petitioner that complaints were made against him to the effect that he practiced medicine without a license and operated a hospital or nursing home without license.

6. That the aforesaid accusations were false and were made maliciously by the aforesaid persons for the purpose of either avoiding their financial obligation to your petitioner or for the purpose of recovering from him by criminal proceedings the money they had paid or for the purpose of getting out of him, money to which they were not legally entitled.

7. That your petitioner did not practice medicine, and did not conduct a hospital and did not conduct a private nursing home, and, therefore, could not be guilty of doing these things without a license, is borne out by the testimony of Dr. H. A. Brown, the only medical testimony called against your petitioner by the Commonwealth (R. 65a, 67a and following) and by the testimony of your petitioner and the testimony of Mrs. Ida L. Vannaman and Mrs. Kate Porter (R. 129a to 144a incl. and following), all of whom qualified as witnesses who were in a position to state the distinction between what constitutes and what does not constitute the practice of medicine, the conducting of a hospital and the conducting of a private nursing home.

8. That there is not sufficient in the Commonwealth's evidence (R. 19a to 102a incl. and following) to support conviction of your petitioner of the offenses charged (R. 6a *et seq.* and 15a *et seq.*) in the Bill of Indictment.

9. That even if the aforesaid Commonwealth's evidence were sufficient to support the offenses charged in the Bill of Indictment (and this is not admitted), petitioner's real complaint as a citizen of the United States of America in that he was forced to trial on all charges in the month of August, 1940, at a time when he could not reach his counsel, John P. Connelly, Esq., of the Philadelphia Bar who was away on vacation, and was forced to say that in the absence of said counsel, he would rather fight the case himself than have two lawyers forced upon him at the last minute by the Trial Judge when the said two lawyers were not familiar with the case and its details, and when he could not reach and subpoena witnesses and evidence needed by him to rebut the charges that he practiced medicine and operated a hospital and a private nursing home without license.

10. In addition to being forced to trial on short notice and with neither time nor opportunity to properly defend him-

self and without opportunity to secure his counsel, witnesses, and evidence contrary to the Constitution of the United States of America and of the Commonwealth of Pennsylvania, your petitioner was also denied due process in that he was not furnished with a subpoena with which even to attempt to secure his witnesses and evidence had he time to do so, and he was not properly arraigned in court, plead guilty or not guilty and was not properly informed of the nature and cause of crime with which he was charged, notwithstanding entries in the court docket to the contrary and which on petition he was denied an opportunity to show were false, and despite all the foregoing irregularity, absence of counsel and witnesses and evidence, lack of subpoena and notice and opportunity, the Trial Judge refused a sufficient continuance and as a result, your petitioner did not have a fair trial and as a result, he was denied equal protection of the law such as has been accorded to others in similar cases and was convicted without due process of law (R. 170a to 176a inclu.).

11. Your petitioner, convicted as aforesaid, was sentenced on Jan. 18, 1941 to prison for a period of 60 days and to pay a fine of $1,000.00 and pay the costs of prosecution in both cases, amounting to possibly $500.00, (R. 176a and 177a). Although able to pay said fine and costs and to suffer said imprisonment, your petitioner, feeling that a grave injustice had been done him and that he had been made to suffer a deprivation and denial of his rights as a citizen of the United States, and of the Commonwealth of Pennsylvania, as aforesaid, took an appeal to the Superior Court of the Commonwealth of Pennsylvania and the Superior Court of Pennsylvania, in an opinion by Judge Rhodes, filed June 30, 1941, a copy of which is submitted herewith, affirmed the judgments and sentences of the Quarter Sessions Court of York County, Pennsylvania, in the above cases and ordered that your petitioner appear in the court

below at such time as that court may direct for commitment until such time as the sentences of said court have been complied with. A copy of the record and of appellant's briefs in the above cases are also submitted herewith.

12. Subsequently your petitioner filed in the Superior Court, a Petition for reargument, which the Superior Court denied.

13. That the Quarter Sessions Court of York County, Pennsylvania, ordered your petitioner to appear before it on Monday, July 28, 1941, at 10 A. M. for commitment, but sentence was not imposed on your petitioner at that time or at any time down to the present time because of orders signed by the Trial Judge that appeals to the Superior and Supreme Courts of Pennsylvania and to the Supreme Court of the United States, should operate as a supersedeas (R. 3a and 12a).

14. That although the Superior Court of Pennsylvania says in its opinion that it has reviewed the entire record, it apparently has overlooked the fact that although your petitioner was convicted in the York County Quarter Sessions Court as of August Sessions, 1940, No. 42, of "Unlawfully operating a Private Nursing Home" and of "Unlawfully operating a Private Hospital", there is not one speck of evidence that he conducted a private nursing home, and therefore, he could not be properly convicted of doing so, and the allegations—conclusions of witnesses—that he conducted a private hospital, were made by persons, who, even if qualified to make such conclusions, gave no real facts on which to base such conclusions, and whose testimony with respect thereto was strongly rebutted by well-qualified persons, and whose testimony would have been still further rebutted had your petitioner been given the time, the opportunity and the process of the court to secure the attendance of additional witnesses.

15. That although the Superior Court of Pennsylvania says in its opinion that it has reviewed the entire record and has carefully examined appellant's briefs it apparently has overlooked the fact that the medical practice act exempts osteopaths or those practicing under the osteopathic practice act and does not interfere in any way with practice under an osteopathic license which specifically permits an osteopath to practice surgery. In spite of the fact that your petitioner showed beyond the shadow of a doubt, and it was admitted, that he is a licensed osteopathic physician in the Commonwealth of Pennsylvania, with the right to diagnose and treat disease and to have the assistance of nurses and to have patients and to practice surgery, and in spite of the fact that a medical doctor called as a witness by the Commonwealth testified that what your petitioner practiced could not properly be called the practice of medicine, your petitioner was convicted of "Unlawful Practice of Medicine and Surgery". Furthermore on this charge also your petitioner was denied the time, the opportunity and the process of the law necessary to secure the presence of medical doctors and other witnesses and evidence to show beyond the shadow of a doubt, that what he professed he practiced was not *materia medica.*

16. The Superior Court disregarded completely the fact that while the degree M.D. appeared on letters following your petitioner's signature and while such letters and other evidence was used to show that he held himself out as licensed to practice *materia medica* in the State of Pennsylvania, he was denied the right by evidence and testimony, to show that he had studied *materia medica* in another State and that he had the degree M.D. from a duly incorporated and authorized school of *materia medica* in another State with as much right to use the degree M.D. following his name in this State as a lawyer educated at Harvard or elsewhere outside of Pennsylvania would have the right to use

the degree L.L.B. following his name in Pennsylvania, even though not admitted to practice law there. And furthermore, he was denied the right to put in evidence for the jury's consideration, certificates showing that prior to the medical practice act he was licensed in Pennsylvania as a medical practitioner.

17. The Superior Court erred in its decision that the record was sufficient to sustain the decisions that your petitioner was guilty of "Unlawful Practice of Medicine and Surgery", of "Unlawfully operating a Private Nursing Home", and of "Unlawfully operating a Private Hospital".

18. That even if your petitioner's evidence was not deemed sufficient to rebut the charges referred to in paragraph 17 hereof, and even if the evidence was sufficient to sustain said charges, and this is not admitted, then, regardless of the number of months which your petitioner may have had to prepare his defense, he had neither time nor opportunity nor process with which to bring to the trial all his witnesses and evidence between the time of his indictment and the date of his trial two days later.

19. That the Superior Court appears to have misunderstood your petitioner's point that he refused to be represented by other than his own counsel, John P. Connelly, Esq., and that he was forced to try the case himself and flounder through it rather than have other than his own counsel, which he understands is not a refusal to have counsel as stated in the opinion of the Superior Court so much as a refusal to have other than his own.

20. That your petitioner on petition to the Trial Court and on petition to the Superior Court was denied an opportunity to take depositions and to show and to prove that the record was incorrect, deficient and incompiete and that

if it was corrected and completed, it would show that he was tried and convicted without due process.

21. Your petitioner avers that by reason of the foregoing, he has been denied his rights as a citizen and resident of the Commonwealth of Pennsylvania, and as a citizen of the United States of America—his right to be heard "by himself *and his counsel*", his right "to demand the nature and cause of the accusation against him", his right "to have compulsory process for obtaining witnesses in his favor", his right to reasonable notice and opportunity to marshall his witnesses and evidence, his right not to be prejudiced by one-sided pretrial of his case in the local newspapers—not knowing enough in the absence of counsel to ask for a change of venue—his right not to be deprived of liberty and property without due process of law, and his right not to be denied the equal protection of the law. (See reference to Federal and Pennsylvania Constitutions, Statutes and Appellate Court decisions on pages 9 to 12 inclu. of appellant's briefs filed herewith.)

22. That when the Superior Court of Pennsylvania denied your petitioner's petition for reargument, your petitioner filed a petition with the Supreme Court of Pennsylvania for the allowance of appeals thereto, but the Supreme Court of Pennsylvania, September 24, 1941, refused said petition.

23. That by such refusal the Supreme Court of Pennsylvania never took said case, and never entered it as a proceeding before that court on said court's records, thus making the Superior Court the highest court in the State of Pennsylvania to hand down a final decision in the case as of June 30, 1941.

Statement as to Jurisdiction.

It is contended that the Supreme Court of the United States of America has jurisdiction to review the sentences

of the Quarter Sessions Court of York County, Pennsylvania, in question because it is contended that the defendant is a citizen of the United States of America and that the convictions on which he has been sentenced in the above cases were obtained by denying the defendant a fair trial and by denying him due process and the equal protection of the law and counsel and witnesses and evidence and arraignment as set forth in the Petition for Allowance of Appeal which this statement as to jurisdiction accompanies, contrary to the provisions of Amendment XIV, Sec. 1, which provided *inter alia*: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*"

(a) The Statutory provisions believed to sustain the jurisdiction of the Supreme Court of the United States is found in U. S. C. A. Title 28, Sec. 344.

(b) The date of sentences sought to be reviewed is January 18, 1941, affirmed by Superior Court of Pennsylvania, June 30, 1941. An appeal to the Supreme Court of Pennsylvania has been refused, making the decision of the Superior Court of Pennsylvania on June 30, 1941, the final decision by an appellant court of the State. The date upon which this application for appeal is presented to the Justices of the Supreme Court of the United States of America, is September 29, 1941, within 3 calendar months from the aforesaid decision of the Superior Court of Pennsylvania.

An examination of the assignments of error (see briefs for appellant pages 4 to 8 inclu. submitted herewith, the record in the case and the rulings therein as disclosed by said record show the nature of the cases and the rulings of the court such as to bring the cases within the jurisdictional provisions referred to above and relied upon.

The questions involved are substantial—namely whether or not a citizen of the United States of America may be deprived of his liberty and property without due process of law, and whether a citizen of the United States within the jurisdiction of the Commonwealth of Pennsylvania shall be denied the equal protection of its laws.

The Federal questions sought to be reviewed were raised in the Quarter Sessions Court of York County, Pennsylvania, upon the trial of the case at York, Pa., on Friday, August 30, 1940, as follows: "The Defendant: If the court please, I would like to ask for a continuance, your Honor, on the ground that I have not had sufficient time to prepare my case for trial and the case being called the second day after a bill was found, I have not had time to prepare, and I stand on my constitutional rights and ask for a continuance of the case."

"The Court: Your request may be noted by the stenographer, and, under the circumstances, the Court is compelled to refuse it."

"The Court (to the District Attorney): You may see whether you can find counsel for the Defendant."

"Mr. Rudisill (Assistant District Attorney): If the Court please, Mr. Stein (Paul Stein, Esq.) is here and will assist the court."

"Mr. Paul Stein: I have already said, your Honor, that I did not care to represent the Defendant, but Mr. John T. Logan is here and he has said that he will assist me."

"The Court: Very well, we will appoint both of you."

"The Defendant: Your Honor, I have to beg to refuse counsel and cancel my prerogative of acting as my own attorney. I cannot accept counsel."

"The Court: Very well, you are privileged to do that. I did not know that was your desire."

(The foregoing appears in the record (Pages 18a and 19a) but does not disclose the fact that on the day preceding, August 29, 1940, the defendant, notified that he had been indicted on August 28, 1940, appeared in Chambers of Honorable Walter I. Anderson, his Trial Judge, informed him that counsel for defendant, John P. Connelly, Esq., of the Philadelphia Bar, was away on vacation and that he could secure neither his counsel, nor his witnesses, nor his evidence and requested for the first time, a postponement or continuance, which was refused.)

Referring to his attorney, John P. Connelly, Esq., of the Philadelphia Bar, page 47a of the record, the defendant said "Dr. Crandall: That is what I asked you for, your Honor, an attorney, and you would not allow me to have one."

"Mr. Rudisill (Assistant District Attorney): That is not true."

"The Court: Dr. Crandall, that is very objectionable and I want this Jury to understand that I agreed to appoint two attorneys for you just before you went to trial and you refused to have either of them. Now don't make any such accusation as that. Have you any further questions?"

"Dr. Crandall: Well, your Honor, my case is so highly technical, would you accept any two attorneys—"

"The Court: We are through with that."

"Dr. Crandall: Alright then, we are through with that. That is all."

And on page 139a of the record we find: "Witness (defendant): Your Honor, I called counsel in Philadelphia"—here the witness was stopped by the District Attorney and the court would not permit him to say that he had been unable to reach his counsel in Philadelphia, away on an August vacation. Then the witness proceeded: "The Witness: If I don't have a right to defend myself what do I have? All I ask is to defend myself. I ought to be accorded that without interrupting me to permit me to tell my story."

And on page 142a of the record "Dr. Crandall: In lieu of my inability to have any defense here, I am calling these people who just happened to accompany me in as employees of mine, to state what they know about the operation of the institution."

And on page 145a of the record: "Dr. Crandall: In view of the fact that I was not able to get any witnesses here, who were acquainted with me previously, that is all that I can produce for the moment, and therefore the defense rests."

And on page 146a of the record we find "Dr. Crandall: Inasmuch as the burden of proof is with the Commonwealth to make out its case, and there was not sufficient evidence produced, I move that the case be dismissed and the charges placed on the Commonwealth."

> "The Court: Your motion is refused. Exception to the defendant."

The Federal questions sought to be reviewed by the Supreme Court of the United States were also raised in the Quarter Sessions Court of York County, Pa., by the filing of motion and reasons for new trial (R. 159a to 161a inclu.).

The Federal questions sought to be reviewed were also raised in the Quarter Sessions Court of York County, Pa., by the filing of additional reasons in support of motion for new trial (R. 162a to 165a inclu.) and by the filing in said court of a petition for rule to show cause why the record in the above cases should not be enlarged and corrected (R. 170a to 175a inclu.).

The Federal questions sought to be reviewed by the Supreme Court of the United States were also raised in the Superior Court of the Commonwealth of Pennsylvania by statement of questions involved (appellant's briefs, p. 1) and by assignments of error (appellant's brief pages 2 to 8 incl.).

The opinion of the Quarter Sessions Court of York County, Pa., overruling defendant's motion for new trial

will be found on pages 165a to 169a incl. of the record submitted herewith.

The opinion of the Superior Court of the Commonwealth of Pennsylvania, affirming the decision of the Quarter Sessions Court of York County, Pa., as of June 30, 1941, is also submitted herewith.

H. EUGENE GARDNER,
Attorney for Petitioner and Appellant.

September 29, 1941.

Addenda.

The statutes of the Commonwealth of Pennsylvania referred to and quoted on the second page of the petition attempt to do indirectly that which they do not do directly and specifically—namely make the operation of a health school the operation of a hospital or nursing home and have a license therefor and make the use of M.D. the practice of medicine.

Prayer.

Wherefore, your petitioner, believing that an injustice has been done, that he was not given a fair trial, that he was denied due process of law, that he has been denied the equal protection of the law, that his rights were not adequately protected by the Trial Judge, that the errors referred to above affect his constitutional and substantive rights and that the evidence does not support and justify the verdicts and judgments, and that even if such evidence were deemed sufficient, and this is not admitted, he should at least be given a new trial with sufficient notice and opportunity and process to secure and have present and have the benefit of all his witnesses and evidence, prays your Honorable Court that writs of certiorari issue under the seal of Your Honorable Court, directed to the Superior Court of Pennsylvania commanding said court to certify and send to your

Honorable Court a full and complete transcript of the record and of the proceedings of the said Quarter Sessions Court of York County, Pennsylvania, had in the cases numbered and entitled Commonwealth of Pennsylvania, Appellee, *vs.* George E. Crandall, Appellant, August Sessions, 1940, Nos. 42 and 43 and Nos. 37 and 38 Superior Court March term 1941, to the end that these cases may be reviewed and determined by your Honorable Court as provided for by the Constitution and Statutes of the United States, and that the sentences of said Quarter Sessions Court of York County, Pennsylvania, and the Superior Court of Pennsylvania may be reversed by Your Honorable Court and/or said cases returned for new trials, and for such further relief as to Your Honorable Court may seem proper.

GEORGE E. CRANDALL.

Dated October 2nd, 1941.

STATE OF PENNSYLVANIA,
County of York, ss:

George E. Crandall, being duly sworn according to law, deposes and says that he is the above-named petitioner and appellant, and that the facts set forth in the foregoing petition are true and correct to the best of his knowledge, information and belief.

GEORGE E. CRANDALL.

Sworn to and subscribed before me this 2nd day of October, A. D. 1941.

B. W. BAKER,
Justice of the Peace.

My commission expires Jan. 3, 1944.

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Nos 678 -679

In the Superior Court of Pennsylvania

Harrisburg District

MARCH TERM, 1941 No. 37

COMMONWEALTH OF PENNSYLVANIA

vs.

GEORGE E. CRANDALL,

Appellant

BRIEF FOR APPELLANT

Appeal from Sentence of the Quarter Sessions Court of York County, Pennsylvania, as of August Sessions, 1940, No. 42, Refusing Motion for New Trial.

H. EUGENE GARDNER,
Attorney for Appellant.

Keswick Theatre Block,
Glenside, Pa.

Murrelle Printing Company, Law Printers, Sayre, Pa.
Ernest E. Heim, Montgomery County Representative, Norristown, Pa.

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STATEMENT OF QUESTIONS INVOLVED

Is a trial for operating a private nursing home without license in a state court in which the accused is hurried to conviction without regard to his rights under Federal and State Constitutions without due process of law and absolutely void? (Answered in the Negative)

Is a defendant denied due process of law if he has not had proper opportunity to present his evidence and sufficient notice to get his witnesses to the trial and opportunity to secure his own counsel, contrary to Federal and State Constitutions? (Answered in the Negative)

Is a defendant denied the equal protection of the law if, contrary to provisions of Federal and State constitutions he is not properly informed of the nature and cause of crime with which he is charged, is not given an opportunity upon arraignment to plead guilty or not guilty, is denied the right to be heard by his own counsel, is denied a subpoena to compel the attendance of witnesses in his behalf, is denied a proper opportunity to present his evidence, and is denied notice and opportunity to present his evidence? (Answered in the Negative)

Was the defendant deprived of his rights and privileges as a citizen of the United States by refusal of continuance to afford more notice and opportunity to defend himself, by refusal of defendant's motion for new trial, and by sentence from which defendant appeals? (Answered in the Negative)

Was the defendant prejudiced by refusal of the Court below to enlarge and correct an incomplete and incorrect record? (Answered in the Negative)

HISTORY OF THE CASE

On August 30, 1940, a jury found the defendant, George E. Crandall, guilty of operating a private nursing home without license. This was the conclusion of a trial on said charge in the Quarter Sessions Court of York County, Pennsylvania, as of August Sessions, 1940, No. 42,—a trial which followed by two days the finding of a true bill against the defendant; a trial one day after the defendant first learned of the indictment against him; a trial for which the defendant was not provided with subpoena to compel the appearance of witnesses and the production of evidence in his behalf; a trial in which the defendant was denied his right under the Constitution of Pennsylvania to be heard by counsel; a trial in which the defendant was not informed by arraignment of the charge against him and not accorded the privilege of pleading guilty or not guilty; a trial in which the defendant was hurried to conviction without regard to his rights, thus denying him the process of the law; a trial in which the defendant had neither sufficient notice nor opportunity to marshal his witnesses and evidence; a trial in which the defendant not only was denied due process of law but also the equal protection of the law, all contrary to provisions of the Federal and State Constitutions, and in which evidence in his favor was erroneously excluded and evidence against him improperly admitted, largely because he was forced to trial without counsel, and in which an opportunity to correct and enlarge by amendment an erroneous and incomplete record was denied.

A motion for new trial has been denied, an opportunity to correct and complete the record by amendment denied, and an appeal taken from the sentence of the Court below (Hon. Walter I. Anderson, J.) imposing a fine of one thousand dollars and costs of prosecution.

ASSIGNMENTS OF ERROR

1. The learned Court below erred in making the following order (169a):

> "And now, to wit, December 30, 1940, defendant's motion for a new trial is overruled and dismissed and defendant is directed to appear before the Court for sentence on January 6, 1941, at 10:00 o'clock a. m.
>
> By the Court,
> Walter I. Anderson, *Judge.*"

2. The learned Court below erred in not granting defendant's request for a continuance on August 29, 1940, to afford defendant sufficient time, notice and opportunity to secure his counsel, evidence and witnesses, and in forcing the defendant to trial without these and without process on August 30, 1940, after indictment on August 28, 1940, of which he had no notice until August 29, 1940.

3. The learned Court below erred in concluding that defendant's right to demand the nature and cause of the accusations against him and to plead guilty or not guilty thereto under Section 9, Article I, of the Constitution of Pennsylvania had been abolished by statute, as follows (167a):

> "It is difficult to see why defendant objects to the fact that he was not formally arraigned

as it has long been established by statute that formal arraignment has been abolished even in cases of felonies except in murder cases. Act of May 15, 1895, P. L. 71, Commonwealth vs. Ferguson, 44 Super. 626."

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4. The learned Court below erred in denying the defendant the right to be heard by his counsel as provided for under Section 9, Article I of the Constitution of Pennsylvania.

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5. The learned Court below erred in not finding that the defendant is a citizen of the United States and a resident of the Commonwealth of Pennsylvania, and that the trial of him without process, counsel, evidence and witnesses necessary to a fair defense, and which he did not have sufficient time, notice and opportunity to produce in his behalf, and the refusal of a new trial on that account, amounted to a deprivation of his rights and privileges, and a denial of the equal protection of the law, and a taking of his liberty and property contrary to the provisions of Amendment XIV to the Constitution of the United States of America.

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6. The learned Court below erred in not permitting, on petition, correction and enlargement of the record so as to include therein a full, true and complete picture of all the facts and circumstances in the case on which defendant bases his contention that he did not receive a fair and just trial and his further contention that he has suffered and

still suffers denials and deprivations of rights guaranteed by the Constitution of the Commonwealth of Pennsylvania and of the United States of America. The petition is printed on pages 170a-174a, inclusive, enclosed in brackets. The order of the Court thereon is as follows (176a):

> "February 27, 1941. The Court, Honorable Walter I. Anderson, Judge, after hearing arguments by H. Eugene Gardner, Esq., counsel for defendant, and Mr. Rudisill, Assistant District Attorney, refused to have the record enlarged or corrected at this time. The Court granted an exception to the defendant."

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7. The learned Court below erred in not permitting, on petition, correction of the record so as to remove therefrom various errors and falsifications of the record injurious to the defendant. The petition is printed on pages 170a-174a, inclusive, enclosed in brackets. The order of the Court thereon is as follows (176a):

> "February 27, 1941. The Court, Honorable Walter I. Anderson, Judge, after hearing arguments by H. Eugene Gardner, Esq., counsel for defendant, and Mr. Rudisill, Assistant District Attorney, refused to have the record enlarged or corrected at this time. The Court granted an exception to the defendant."

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8. The learned Court below erred in not permitting, on petition, enlargement of the record so as to include therein evidence admitted at the trial but

which does not appear in the record and without which the record is incomplete. The petition is printed on pages 170a-174a, inclusive, enclosed in brackets. The order of the Court thereon is as follows (176a):

> "February 27, 1941. The Court, Honorable Walter I. Anderson, Judge, after hearing arguments by H. Eugene Gardner, Esq., counsel for defendant, and Mr. Rudisill, Assistant District Attorney, refused to have the record enlarged or corrected at this time. The Court granted an exception to the defendant."

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9. The learned Court below erred in the exclusion of evidence offered by the defendant and in the admission of evidence offered against him, which he, with his counsel, would have taken proper objection and exception to.

---

10. The learned Court below erred in not adequately charging the jury as to the defendant's rights to diagnose and treat disease as an osteopathic physician, licensed by the Commonwealth of Pennsylvania, and his right to practice medicine and/or surgery, and his right to use the degree M. D. obtained from a chartered school granting such degrees and his right to practice medicine and/or surgery in its broad sense as evidenced by certificates of the Commonwealth of Pennsylvania. The charge of the Court, enclosed in brackets, is printed on pages 147a-157a, inclusive.

11. The learned Court below erred in not granting the defendant a severance in the trial of this case and the other case tried with it.

---

12. The learned Court below erred in imposing the following sentence or in sentencing the above defendant as follows (177a):

> "January 18, 1941. The Court, Honorable Walter I. Anderson, Judge, sentence the defendant, George E. Crandall, to pay a fine of one thousand ($1,000.00) dollars to the Commonwealth of Pennsylvania for the uses prescribed by law, pay the costs of prosecution and stand committed until this sentence is complied with."

ARGUMENT

An examination of the docket entries in this case discloses that the defendant was indicted on August 28, 1940. He first learned of the indictment on August 29, 1940, at 9:30 a. m., at which time he was informed that he would be going on trial at 10 a. m. on that same morning. The trial judge allowed him one day's postponement of the trial, and he was forced to trial on August 30, 1940, without witnesses, without subpoena, without counsel, and without sufficient notice and opportunity to marshal his witnesses and evidence for a proper defense of his case.

The docket entries further show that the defendant was arraigned on August 30, 1940, and that he pled not guilty. This entry in the Court records is a falsification of the facts. The defendant has witnesses to prove that he was not arraigned and that he did not plead not guilty. He endeavored by petition to enlarge and correct the record to make the record in the case true and complete, but his petition was denied and the case now comes to the Superior Court on a false and incomplete record.

In **Commonwealth vs. Ferguson**, 44 Superior 626, the Superior Court of Pennsylvania decided that in the absence of anything to show the contrary, it is presumed that the plea was entered in open court, as the docket entries plainly show, and that the defendant was present in court when the sentence was imposed. This would indicate that a defendant should be given an opportunity to show that things

were other than they appear by the record, but in the present case the defendant was denied this opportunity, notwithstanding said Superior Court decision.

The defendant further takes the position that he was not required to plead orally or by writing endorsed on the indictment as required by Section 1, Act No. 51, of May 15, 1895, P. L. 71, and that he was denied an opportunity to show all this by refusal of his petition to enlarge and correct the record.

The defendant further takes the position that said Act of May 15, 1895, P. L. 71, could not deprive him of his right to be arraigned guaranteed by Section 9 of Article I of the Constitution of the Commonwealth of Pennsylvania which reads in part: "In all criminal prosecutions, the accused hath a right to be heard by himself *and his counsel to demand* the nature and cause of the accusation against him, * * * to *have compulsory process* for obtaining witnesses in his favor * * * ". The refusal of defendant's petition to enlarge and correct the record denied him opportunity to show that he was not allowed sufficient notice to secure his own counsel so as to be heard by his counsel, and denied him opportunity to show that he was not allowed to demand the nature and cause of the accusation against him, and denied him the right to have compulsory process for obtaining witnesses in his favor. As to these rights under Section 9, Article I, of the Pennsylvania Constitution see the case of *Stewart vs. Commonwealth*, 117 Pa. 378.

Without counsel, witnesses, subpoenas, notice and opportunity, the defendant was hurried to conviction without regard to his rights. In the case of

Moore vs. Dempsey, 261 U. S. 86, the Supreme Court of the United States has held that a trial in a state court in which the accused is hurried to conviction without regard to his rights is without due process of law and absolutely void.

And in the case of **Saunders vs. Shaw,** (La. 1917) 244 U. S. 317, the Supreme Court of the United States decided that where a case has been decided by a state court in such a way that a party has not had proper opportunity to present his evidence, he has been denied due process.

And in the case of **Simon v. Craft,** 182 U. S. 436, the Supreme Court of the United States decided that the essential elements of due process of law are notice and opportunity to defend, and in determining whether such rights are denied the courts are governed by the substance of things and not by mere form.

There shall be a regular course of proceedings, in which notice is given of the claim asserted, and an opportunity to defend against it. See cases in footnote 281, U. S. C. A., Amendment XIV, Section 1, of the U. S. Constitution.

The defendant in this case was not given the usual notice and opportunity, nor did he receive the benefit of such court machinery as counsel, subpoenas, witnesses, evidence and so forth. All these he was denied, where others in like circumstances have the benefit of them. Certainly this is a denial not only of due process but also of the equal protection of the law.

As to when equal protection of the law is denied see the cases of *Minneapolis etc. R. Co. vs. Beckwith,*

129 U. S. 29; *Walston vs. Nevin,* 128 U. S. 582; *In re Grice,* 169 U. S. 284; and the cases in footnote 16 to Amendment XIV, Section 1, to the Constitution of the United States in U. S. C. A., page 297.

Without his counsel the defendant was not advised as to how to secure subpoenas, how to get his witnesses and evidence, how to object to evidence improperly offered and admitted against him, his rights to refuse to testify against himself, and his right to have evidence admitted for him which was erroneously excluded, and how to ask for a severance of the two cases wrongly tried together.

If the defendant had had sufficient notice and opportunity to marshal his counsel, subpoenas, witnesses and evidence he would have been able to show by competent witnesses and evidence that the institution operated by the corporation of which he is President, Dr. Crandall's Health School, Inc., a Pennsylvania corporation, has none of the earmarks of a hospital or private nursing home and therefore could not be one and he could not therefore be guilty of operating one without a license, even if he had operated it, whatever it was. But on top of that it could have been shown, had there been opportunity to do so, that the place was operated as a school to instruct in ways of living to preserve one's health by a corporation organized under the laws of the State of Pennsylvania for the purpose stated, and not by an individual as a hospital or private nursing home.

The record in the case does not disclose that the defendant operated the place involved either as a hospital or as a private nursing home. And even if it did, a new trial certainly should have been

granted because the defendant was not given an opportunity to rebut such contention with the assistance of counsel, witnesses and evidence. Therefore the case should at least be returned to the Quarter Sessions Court of York County, Pennsylvania, for a new trial.

Respectfully submitted,
H. Eugene Gardner,
Attorney for Appellant.

I hereby certify that cases herein cited from other than the Official Reports of the Supreme and Superior Courts of Pennsylvania, are not reported therein.

H. Eugene Gardner,
Attorney for Appellant.

NOS. 678 -679

In the Superior Court of Pennsylvania

Harrisburg District

MARCH TERM, 1941 No. 38

COMMONWEALTH OF PENNSYLVANIA

vs.

GEORGE E. CRANDALL,

Appellant

BRIEF FOR APPELLANT

Appeal from Sentence of the Quarter Sessions Court of York County, Pennsylvania, as of August Sessions, 1940, No. 43, Refusing Motion for New Trial.

H. EUGENE GARDNER,
Attorney for Appellant.

Keswick Theatre Block,
Glenside, Pa.

Murrelle Printing Company, Law Printers, Sayre, Pa.
Ernest E. Heim, Montgomery County Representative, Norristown, Pa.

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STATEMENT OF QUESTIONS INVOLVED

Is a trial for practicing medicine without a license in a state court in which the accused is hurried to conviction without regard to his rights under Federal and State Constitutions without due process of law and absolutely void? (Answered in the Negative)

Is a defendant denied due process of law if he has not had proper opportunity to present his evidence and sufficient notice to get his witnesses to the trial and opportunity to secure his own counsel, contrary to Federal and State Constitutions? (Answered in the Negative)

Is a defendant denied the equal protection of the law, if, contrary to provisions of Federal and State constitutions he is not properly informed of the nature and cause of crime with which he is charged, is not given an opportunity upon arraignment to plead guilty or not guilty, is denied the right to be heard by his own counsel, is denied a subpoena to compel the attendance of witnesses in his behalf, is denied a proper opportunity to present his evidence, and is denied notice and opportunity to present his evidence? (Answered in the Negative)

Was the defendant deprived of his rights and privileges as a citizen of the United States by refusal of continuance to afford more notice and opportunity to defend himself, by refusal of defendant's motion for new trial, and by sentence from which defendant appeals? (Answered in the Negative)

Was the defendant prejudiced by refusal of the Court below to enlarge and correct an incomplete and incorrect record? (Answered in the Negative)

HISTORY OF THE CASE

On August 30, 1940, a jury found the defendant, George E. Crandall, guilty of practicing medicine and surgery without a license. This was the conclusion of a trial on said charge in the Quarter Sessions Court of York County, Pennsylvania, as of August Sessions, 1940, No. 43,—a trial which followed by two days the finding of a true bill against the defendant; a trial one day after the defendant first learned of the indictment against him; a trial for which the defendant was not provided with subpoenas to compel the appearance of witnesses and the production of evidence in his behalf; a trial in which the defendant was denied his right under the Constitution of Pennsylvania to be heard by counsel; a trial in which the defendant was not informed by arraignment of the charge against him and not accorded the privilege of pleading guilty or not guilty; a trial in which the defendant was hurried to conviction without regard to his rights, thus denying him the process of the law; a trial in which the defendant had neither sufficient notice nor opportunity to marshal his witnesses and evidence; a trial in which the defendant not only was denied due process of law but also the equal protection of the law, all contrary to provisions of the Federal and State Constitutions, and in which evidence in his favor was erroneously excluded and evidence against him improperly admitted, largely because he was forced to trial without counsel, and in which an opportunity to correct and enlarge by amendment an erroneous and incomplete record was denied.

A motion for new trial has been denied, an opportunity to correct and complete the record by amendment denied, and an appeal taken from the sentence of the Court below (Hon. Walter I. Anderson, J.) imposing imprisonment in the County jail for a period of sixty days and costs of prosecution.

ASSIGNMENTS OF ERROR

1. The learned Court below erred in making the following order (169a):

> "And now, to wit, December 30, 1940, defendant's motion for a new trial is overruled and dismissed and defendant is directed to appear before the Court for sentence on January 6, 1941, at 10:00 o'clock a. m.
>
> By the Court,
> Walter I. Anderson, *Judge.*"

2. The learned Court below erred in not granting defendant's request for a continuance on August 29, 1940, to afford defendant sufficient time, notice and opportunity to secure his counsel, evidence and witnesses, and in forcing the defendant to trial without these and without process on August 30, 1940, after indictment on August 28, 1940, of which he had no notice until August 29, 1940.

3. The learned Court below erred in concluding that defendant's right to demand the nature and cause of the accusations against him and to plead guilty or not guilty thereto under Section 9, Article I, of the Constitution of Pennsylvania had been abolished by statute, as follows (167a):

> "It is difficult to see why defendant objects to the fact that he was not formally arraigned as it has long been established by statute that

formal arraignment has been abolished even in cases of felonies except in murder cases. Act of May 15, 1895, P. L. 71, Commonwealth vs. Ferguson, 44 Super. 626."

---

4. The learned Court below erred in denying the defendant the right to be heard by his counsel as provided for under Section 9, Article I of the Constitution of Pennsylvania.

---

5. The learned Court below erred in not finding that the defendant is a citizen of the United States and a resident of the Commonwealth of Pennsylvania, and that the trial of him without process, counsel, evidence and witnesses necessary to a fair defense, and which he did not have sufficient time, notice and opportunity to produce in his behalf, and the refusal of a new trial on that account, amounted to a deprivation of his rights and privileges, and a denial of the equal protection of the law, and a taking of his liberty and property contrary to the provisions of Amendment XIV to the Constitution of the United States of America.

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6. The learned Court below erred in not permitting, on petition, correction and enlargement of the record so as to include therein a full, true and complete picture of all the facts and circumstances in the case on which defendant bases his contention that he did not receive a fair and just trial and his further contention that he has suffered and still suffers denials and deprivations of rights guaranteed by the Constitution of the Commonwealth of

Pennsylvania and of the United States of America. The petition is printed on pages 170a-174a, inclusive, enclosed in brackets. The order of the Court thereon is as follows (176a):

> "February 27, 1941. The Court, Honorable Walter I. Anderson, Judge, after hearing arguments by H. Eugene Gardner, Esq., counsel for defendant, and Mr. Rudisill, Assistant District Attorney, refused to have the record enlarged or corrected at this time. The Court granted an exception to the defendant."

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7. The learned Court below erred in not permitting, on petition, correction of the record so as to remove therefrom various errors and falsifications of the record injurious to the defendant. The petition is printed on pages 170a-174a, inclusive, enclosed in brackets. The order of the Court thereon is as follows (176a):

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printed on pages 170a-174a, inclusive, enclosed in brackets. The order of the Court thereon is as follows (176a):

> "February 27, 1941. The Court, Honorable Walter I. Anderson, Judge, after hearing arguments by H. Eugene Gardner, Esq., counsel for defendant, and Mr. Rudisill, Assistant District Attorney, refused to have the record enlarged or corrected at this time. The Court granted an exception to the defendant."

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9. The learned Court below erred in the exclusion of evidence offered by the defendant and in the admission of evidence offered against him, which he, with his counsel, would have taken proper objection and exception to.

---

10. The learned Court below erred in not adequately charging the jury as to the defendant's rights to diagnose and treat disease as an osteopathic physician, licensed by the Commonwealth of Pennsylvania, and his right to practice medicine and/or surgery, and his right to use the degree M. D. obtained from a chartered school granting such degrees and his right to practice medicine and/or surgery in its broad sense as evidenced by certificates of the Commonwealth of Pennsylvania. The charge of the Court, enclosed in brackets, is printed on pages 147a-157a, inclusive.

---

11. The learned Court below erred in not granting the defendant a severance in the trial of this case and the other case tried with it.

12. The learned Court below erred in imposing the following sentence or in sentencing the above defendant as follows (176a):

> "January 18, 1941. The Court, Honorable Walter I. Anderson, Judge, sentence the defendant, George E. Crandall, to undergo imprisonment in the County jail for a period of sixty (60) days, that he pay the costs of prosecution and stand committed until this sentence is complied with."

ARGUMENT

An examination of the docket entries in this case discloses that the defendant was indicted on August 28, 1940. He first learned of the indictment on August 29, 1940, at 9:30 a. m. at which time he was informed that he would be going on trial at 10 a. m. on that same morning. The trial judge allowed him one day's postponement of the trial, and he was forced to trial on August 30, 1940, without witnesses, without subpoena, without counsel, and without sufficient notice and opportunity to marshal his witnesses and evidence for a proper defense of his case.

The docket entries further show that the defendant was arraigned on August 30, 1940, and that he pled not guilty. This entry in the Court records is a falsification of the facts. The defendant has witnesses to prove that he was not arraigned and that he did not plead not guilty. He endeavored by petition to enlarge and correct the record to make the record in the case true and complete, but his petition was denied and the case now comes to the Superior Court on a false and incomplete record.

In **Commonwealth vs. Ferguson**, 44 Superior 626, the Superior Court of Pennsylvania decided that in the absence of anything to show the contrary, it is presumed that the plea was entered in open court, as the docket entries plainly show, and that the defendant was present in court when the sentence was imposed. This would indicate that a defendant should be given an opportunity to show that things were other than they appear by the record, but in

the present case the defendant was denied this opportunity, notwithstanding said Superior Court decision.

The defendant further takes the position that he was not required to plead orally or by writing endorsed on the indictment as required by Section 1, Act No. 51, of May 15, 1895, P. L. 71, and that he was denied an opportunity to show all this by refusal of his petition to enlarge and correct the record.

The defendant further takes the position that said Act of May 15, 1895, P. L. 71, could not deprive him of his right to be arraigned guaranteed by Section 9 of Article I of the Constitution of the Commonwealth of Pennsylvania which reads in part: "In all criminal prosecutions, the accused hath a right to be heard by himself *and his counsel to demand* the nature and cause of the accusation against him, * * * to *have compulsory process* for obtaining witnesses in his favor * * * ". The refusal of defendant's petition to enlarge and correct the record denied him opportunity to show that he was not allowed sufficient notice to secure his own counsel so as to be heard by his counsel, and denied him opportunity to show that he was not allowed to demand the nature and cause of the accusation against him, and denied him the right to have compulsory process for obtaining witnesses in his favor. As to these rights under Section 9, Article I, of the Pennsylvania Constitution see the case of *Stewart vs. Commonwealth*, 117 Pa. 378.

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Moore vs. Dempsey, 261 U. S. 86, the Supreme Court of the United States has held that a trial in a state court in which the accused is hurried to conviction without regard to his rights is without due process of law and absolutely void.

And in the case of **Saunders vs. Shaw,** (La. 1917) 244 U. S. 317, the Supreme Court of the United States decided that where a case has been decided by a state court in such a way that a party has not had proper opportunity to present his evidence, he has been denied due process.

And in the case of **Simon v. Craft,** 182 U. S. 436, the Supreme Court of the United States decided that the essential elements of due process of law are notice and opportunity to defend, and in determining whether such rights are denied the courts are governed by the substance of things and not by mere form.

There shall be a regular course of proceedings, in which notice is given of the claim asserted, and an opportunity to defend against it. See cases in footnote 281, U. S. C. A., Amendment XIV, Section 1, of the U. S. Constitution.

The defendant in this case was not given the usual notice and opportunity, nor did he receive the benefit of such court machinery as counsel, subpoenas, witnesses, evidence and so forth. All these he was denied, where others in like circumstances have the benefit of them. Certainly this is a denial not only of due process but also of the equal protection of the law.

As to when equal protection of the law is denied see the cases of *Minneapolis etc. R. Co. vs. Beck-*

with, 129 U. S. 29; *Walston vs. Nevin*, 128 U. S. 582; *In re Grice*, 169 U. S. 284; and the cases in footnote 16 to Amendment XIV, Section 1, to the Constitution of the United States in U. S. C. A., page 297.

Without his counsel the defendant was not advised as to how to secure subpoenas, how to get his witnesses and evidence, how to object to evidence improperly offered and admitted against him, his rights to refuse to testify against himself, and his right to have evidence admitted for him which was erroneously excluded, and how to ask for a severance of the two cases wrongly tried together.

If the defendant had had sufficient notice and opportunity to marshal his counsel, subpoenas, witnesses and evidence he would have been able to show by competent witnesses and evidence that he was opposed to the practice of using drugs, that he advocated natural and drugless methods, that he taught how to preserve health by proper living and proper eating, and that he used the degree M. D. after his name because such degree was given to him by a school in another state much as a lawyer from another state would put the degree L. L. B. after his name in this state, and with perfect right to do so, even though not admitted to practice law in this state. He also would have shown that there are others in the state publicly using the degree M. D. obtained by them in other states although not admitted to practice medicine in Pennsylvania and in no wise interfered with by the authorities who supported prosecution of the defendant.

The defendant offered in evidence his license from the State of Pennsylvania to practice osteopathy but the trial judge failed to send same out with the

jury, and it was omitted from the record in the case although the trial judge admitted it in evidence. And the trial judge failed to instruct the jury that the Medical Practice Act of June 3, 1911, P. L. 639, by Section 13 thereof provided that it should not apply either directly or indirectly, by intent or purpose, to affect the practice of osteopathy as authorized by the act approved March 19, 1909, P. L. 46. And the trial judge omitted to charge the jury as to the defendant's rights as an osteopath to practice medicine and surgery, to diagnose and treat disease, and to do many things done by practitioners of materia medica which the jury was given to understand the defendant had no right to do. See the case of *Commonwealth vs. Cohen*, Superior Court, October Term 1940, No. 73 (Hirt, J.) 142 Superior Ct. 199.

The case should be returned for a new trial.

Respectfully submitted,
H. Eugene Gardner,
Attorney for Appellant.

I hereby certify that cases herein cited from other than the Official Reports of the Supreme and Superior Courts of Pennsylvania, are not reported therein.

H. Eugene Gardner,
Attorney for Appellant.

FILED
NOV 8 1941
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1941

Nos. 678 and 679

GEORGE E. CRANDALL, Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA.

Petition for Writs of Certiorari to the Superior Court of the Commonwealth of Pennsylvania

---

BRIEF OF RESPONDENT

HERBERT B. COHEN,
56 South George St., York, Pa.,
Counsel for Respondent.

JOHN E. BRENNEMAN, District Attorney.

HAROLD B. RUDISILL, Asst. District Attorney.

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Opinions Below

SUPREME COURT OF THE UNITED STATES

October Term, 1941

Nos. 678 and :679

GEORGE E. CRANDALL, Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA.

Petition for Writs of Certiorari to the Superior Court of the Commonwealth of Pennsylvania

---

BRIEF OF RESPONDENT

OPINIONS BELOW

The opinion of Walter I. Anderson, Judge of the Court of Common Pleas, is reported in 54 York Legal Record 183. The opinion of the Superior Court of Pennsylvania is reported in 21 Atlantic Reporter (2nd) 232.

COUNTER STATEMENT OF THE CASE

On March 11, 1940, the petitioner, George E. Crandall, was arrested on the charges of unlawfully operating a nursing home, of unlawfully operating a private hospital and of holding himself out as a practitioner of medicine and surgery without first having received a Certficate of Licensure from the Bureau of Medical Education and Licensure of Pennsylvania. He gave bail for his appearance at a preliminary hearing which was held April 12, 1940. After the hearing the defendant was held for the August Sessions of the Quarter Sessions Court and gave bail for his appearance. The defendant was represented by Counsel at the preliminary hearing.

On August 28, 1940, the case was submitted on the three counts to Nos. 42 and 43, August Sessions, 1940. The petitioner, by his Counsel requested a continuance of the case, which request was refused with the direction that the case be called on the following morning, August 30, 1940.

When the case was called for trial on August 30, 1940, at 9:30 A. M., the petitioner appeared without Counsel and the Court offered to appoint two attorneys to represent him, which offer of the Court was refused by the petitioner who stated, "Your Honor, I have to beg to refuse Counsel and exercise my prerogative of acting as my own attorney. I cannot accept Counsel." The case proceeded to trial with the petitioner acting as his own attorney. After hearing the case the Jury returned a verdict of "guilty." On September 3, 1940, the petitioner filed his motion for

a new trial, which motion was refused by the Court after argument had on the said motion.

On January 18, 1941, petitioner was sentenced to sixty days in jail, to pay a fine of $1,000.00 and the cost of prosecution. From this sentence the petitioner appealed to the Superior Court of Pennsylvania, which on June 30, 1941, affirmed petitioner's conviction. A rehearing was denied petitioner on July 18, 1941, and the Supreme Court of Pennsylvania on September 24, 1941, refused a petition for appeal.

SUMMARY OF ARGUMENT

I.

The petitioner has been afforded due process of law under the Constitution of the United States, and has had a fair trial in every respect.

II.

The opinions of the Courts of Pennsylvania are in accord with the applicable decisions of the Supreme Court of the United States.

ARGUMENT
INTRODUCTION

The allegations of the petition for writs of certiorari filed in this case are so argumentative and confused with questions of fact and law that it is difficult for respondent to determine just on what basis the petitioner seeks to have the writs issued.

All of the allegations of fact in the petition filed in this court contained in paragraphs one to seven, inclusive, are obviously immaterial, impertinent, and irrelevant to any issue involved in this proceeding. Petitioner was given ample opportunity to present his case before a jury, who found the facts to be contrary to his allegations. No question was raised by the petitioner as to the sufficiency of the evidence to sustain the convictions, when he appealed to the Superior Court of Pennsylvania.

Comm. v. Crandall, 21 A. 2nd, 232, 234.

The Superior Court, however, reviewed the entire record, including the evidence, and determined it to be sufficient to justify the verdict and judgment

I. The petitioner has not been denied any rights under the Constitution of the U. S. or its Amendments.

He complains that the Court below erred in not granting his request for a continuance. The record discloses that the defendant was arrested on March 11, 1940, and that a preliminary hearing was held on April 12, 1940, at the conclusion of which he gave bail for his appearance at the August Sessions of the

Quarter Sessions Court. Thus it is seen that the petitioner had over five months to prepare his case.

The Superior Court of Pennsylvania has said in **Commonwealth vs. Rouchie, et al., 135 Pa. Super. 594, 600**, that the all important question is the time allowed defendant himself, and not the interval between appointment of counsel and the date of the trial.

Commonwealth vs. Meyers, 290 Pa. 573, 578;

Commonwealth vs. Lockard, 325 Pa. 56, 62.

In the case of the **Commonwealth vs. Rouchie, supra**, the information was filed against the defendant on December 30, 1938, and a preliminary hearing was held on January 25, 1939. The indictment was returned February 9, 1939, and a motion for continuance filed February 14, 1939, which was refused the same day and the trial began February 15, 1939.

In the instant case the petitioner had even more time than in the case of **Commonwealth vs. Rouchie, et al., supra.** And in this, as in that case, there was no motion supported by affidavit showing any facts warranting a continuance nor was there any evidence to show that five months was not sufficient time to prepare a defense.

An application for a continuance is addressed to the sound discretion of the trial judge, and his action will not be disturbed unless that discretion has been abused.

Commonwealth vs. Rouchie, et al., 135 Pa. Super. 594, 599;

Commonwealth vs. Deni, 317 Pa. 289, 293;

Commonwealth vs. Meyers, 290 Pa. 573;

Commonwealth vs. Blakely, 274 Pa. 100, 104;

Commonwealth vs. Zec, 262 Pa. 251, 255;

Commonwealth vs. Scouton, 20 Pa. Super. 503, 517.

A defendant has no natural or inalienable right to a continuance.

Commonwealth vs. Meyers, 290 Pa. 573;

Commonwealth vs. Blakely, 274 Pa. 100, 104.

The petitioner takes the position that he was not formally arraigned. This case is not one triable solely in the Oyer and Terminer and therefore, arraignment was not necessary.

Act of May 15, 1895, P. L. 71:

Commonwealth vs. Ferguson, 44 Pa. Super. 626, 630.

The Commonwealth contends that there was no denial to petitioner of the constitutional right to be heard by his counsel because petitioner WAIVED this right.

The waiver was made in open Court, on the record, and petitioner was fully aware of the effect of his voluntary act. (See Record page 19a).

When petitioner appeared before the Court on the

day appointed for trial without counsel, the trial Court appointed two members of the Bar to assist and represent him. (See Record page 19a).

Petitioner however, refused this offer of assistance, stating as follows:

> "Your Honor, I have to beg to refuse counsel and exercise my prerogative of acting as my own attorney. I cannot accept counsel." (Record page 19a).

It is difficult to see how petitioner could have more clearly evidenced his intention of waiving his right to counsel.

The Supreme Court of the United States has defined a waiver as follows:

> "A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. The determination of whether there has been an intelligent waiver of the right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience and conduct of the accused."

Johnson vs. Zerbst, 304 U. S. 458, 465.

That a defendant in a criminal case may waive his right to the assistance of counsel is well settled, and whether or not the accused has actually waived his right is a matter for the trial Court, whose decision in the matter will not be reversed except for abuse of discretion.

Commonwealth, ex rel. Shultz, vs. Smith, 139 Pa. Super. 357;

State vs. Townley, 149 Minn. 5; certiorari denied, 257 U. S. 263.

The Commonwealth submits that the learned trial judge did not abuse his discretion. The relevant circumstances of this case manifest that the defendant was fully aware of his rights and deliberately chose to waive them. He was arrested over five months prior to his trial, and was freed on bail for action of the August Term of the Court after a preliminary hearing at which he had counsel. (See Record pages 5a and 13a). He knew for over five months that his case was to be before the Court in the August Sessions. Petitioner is an intelligent individual, a graduate of the Osteopathic College, and for years maintained and presided over an institution for the care of the sick. The charges, he knew, grew out of and were concerned with this very institution.

The Commonwealth had procured the presence of witnesses, some from distant sections of the State, for the term of Court for which defendant was held by the Alderman as a result of the preliminary hearing.

The petitioner had an equal opportunity to prepare his case on the basis that it would come up for trial at the August Term of Court. He had Counsel other than John P. Connelly, Esquire, at his preliminary hearing on April 12, 1941, so he cannot later complain that he should be entitled to the services of one particular attorney. The fallacy of petitioner's argument on this account is pointed out by Judge Rhodes of the Superior Court of Pennsylvania:

> "Generally, the question in such cases is the time which the defendant himself has been

allowed, and not whether the time between the date an attorney is engaged by the accused and the date set for trial is sufficient. Otherwise all that a defendant would have to do in order to secure unending delay would be to change counsel on the eve of the trial."

COMM. V. CRANDALL, 21 Atl. 2nd, 232, 234.

It is therefore respectfully submitted that petitioner's statements to your Honorable Court that the courts of Pennsylvania have denied him any rights whatsoever to which he is entitled under the laws of Pennsylvania or the Constitution of the United States or the Amendments are wholly unsupported by the record and entirely without merit.

II. The opinion of the Court of Quarter Sessions of York County and of the Superior Court of Pennsylvania are wholly in accord with the applicable decisions of the Supreme Court of the United States.

The policy of this Court with respect to writs of certiorari is set forth in rule 38(5)(a).

It is submitted that the record of this case and the petition filed in this case of themselves clearly show that the petitioner has no special or important reasons for the granting of the writs. The cases previously cited are indicative of the fact that the federal questions of substance purported to be raised here have been well settled law for some time. Surely no serious argument can be made on behalf of petitioner that this case has been decided in a way not in accord with the applicable decisions of this court.

It is therefore respectfully submitted that petitioner has had his day in court. His constitutional

rights as a citizen have been carefully guarded, and all the objections which he and his counsel could possibly think of to raise have been patiently and carefully considered and passed upon by the York County Court on a motion for new trial, by the Superior Court of Pennsylvania on appeal and petition for reargument, and by the Supreme Court of Pennsylvania in refusing an appeal to that body.

It is respectfully submitted, therefore, that the prayer of the petition for the writs of certiorari in these cases is without merit and should be denied.

Respectfully submitted,

JOHN E. BRENNEMAN,
District Attorney.

HAROLD B. RUDISILL,
Assistant District Attorney.

HERBERT B. COHEN, Esquire,
Counsel for Respondent.

372 Nos. 678-679 PITTSBURGH
MAY 5 1941
ABSENT

IN THE

SUPERIOR COURT OF PENNSYLVANIA

Harrisburg District

MARCH TERM, 1941. No. 37.

COMMONWEALTH OF PENNSYLVANIA,

VS.

GEORGE E. CRANDALL,

Appellant.

Brief for Appellee

Appeal from Sentence of the Court of Quarter Sessions of York County, Pennsylvania, as of No. 43 August Session, 1940, Refusing Motion for New Trial.

JOHN E. BRENNEMAN,
District Attorney,
HAROLD B. RUDISILL,
Assistant District Attorney.

Court House,
York, Pennsylvania.

The Riverside Press, Athens, Pa., Henry C. Kessler, York County Rep., Court House, York, Pennsylvania.

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COUNTER-STATEMENT OF THE QUESTIONS INVOLVED

1. Did the learned Court below abuse its discretion in refusing defendant's motion for a new trial on the grounds that he was deprived of his constitutional rights and denied a fair trial?

2. Did the learned Court below abuse its discretion in refusing defendant's petition to alter and amend the record?

COUNTER-HISTORY OF THE CASE

This is an appeal from the refusal of the Court of Quarter Sessions of the Peace of York County, Pennsylvania, to grant a new trial.

On March 11, 1940 the defendant, George E. Crandall was arrested on the charge of holding himself out as a practitioner of medicine and surgery, without first having received a Certificate of Licensure from the Bureau of Medical Education and Licensure. He gave bail for his appearance at a preliminary hearing which was held April 12, 1940. After the hearing the defendant was held for the August Sessions of the Quarter Sessions Court and gave bail for his appearance. The defendant was represented by Counsel at the preliminary hearing.

On August 28, 1940 the case was submitted to the Grand Jury and a true bill found. On August 29, 1940, the defendant, by his Counsel requested a continuance of the case, which request was refused with the direction that the case be called on the following morning, August 30, 1940.

When the case was called for trial on August 30, 1940 at 9:30 A. M. the defendant appeared without Counsel and the Court offered to appoint two attorneys to represent the defendant which offer of the Court was refused by the defendant who stated "Your Honor, I have to beg to refuse Counsel and exercise my prerogative of acting as my own at-

torney. I cannot accept Counsel." The case proceeded to trial with the defendant acting as his own attorney. After hearing the case the Jury returned a verdict of "guilty". On September 3, 1940 the defendant filed his motion for a new trial, which motion was refused by the Court after argument had on the said motion.

ARGUMENT

The Appellant complains that the Court below erred in not granting defendant's request for a continuance. The record discloses that the defendant was arrested on March 11, 1940, and that a preliminary hearing was held on April 12, 1940, at the conclusion of which he gave bail for his appearance at the August Sessions of the Quarter Sessions Court. Thus it is seen that the defendant had over five months to prepare his case.

The Superior Court has said in *Commonwealth vs. Rouchie, et al.*, 135 Pa. Super. 594, 600, that the all important question is the time allowed defendant himself, and not the interval between appointment of counsel and the date of the trial.

Commonwealth vs. Meyers, 290 Pa. 573, 578;

Commonwealth vs. Lockard, 325 Pa. 56, 62.

In the case of the *Commonwealth vs. Rouchie*, supra, the information was filed against the defendant on December 30, 1938, and a preliminary hearing was held on January 25, 1939. The indictment was returned February 9, 1939, and a motion for continuance filed February 14, 1939, which was refused the same day and the trial began February 15, 1939.

In the instant case the defendant had even more time than in the case of *Commonwealth vs. Rouchie, et al.*, supra. And in this, as in that case, there

was no motion supported by affidavit showing any facts warranting a continuance nor was there any evidence to show that five months was not sufficient time to prepare a defense.

An application for a continuance is addressed to the sound discretion of the trial judge, and his action will not be disturbed unless that discretion has been abused.

Commonwealth vs. Rouchie, et al., 135 Pa. Super. 594, 599;

Commonwealth vs. Deni, 317 Pa. 289, 293;

Commonwealth vs. Meyers, 290 Pa. 573;

Commonwealth vs. Blakeley, 274 Pa. 100, 104;

Commonwealth vs. Zec, 262 Pa. 251, 255;

Commonwealth vs. Scouton, 20 Pa. Super. 503, 517.

A defendant has no natural or inalienable right to a continuance.

Commonwealth vs. Meyers, 290 Pa. 573;

Commonwealth vs. Blakeley, 274 Pa. 100, 104.

The defendant takes the position that he was not formally arraigned. This case is not one triable solely in the Oyer and Terminer and therefore, arraignment was not necessary.

Act of May 15, 1895, P. L. 71;

Commonwealth vs. Ferguson, 44 Pa. Super. 626, 630.

The fourth assignment of error relates to the trial of the defendant without the assistance of counsel.

The Commonwealth contends that there was no denial to defendant of the constitutional right to be heard by his counsel because the defendant WAIVED this right.

The waiver was made in open Court, on the record, and defendant fully aware of the effect of his voluntary act. (See Record page 19a).

When defendant appeared before the Court on the day appointed for trial without counsel, the learned Court appointed two members of the Bar to assist and represent him. (See Record page 19a).

The defendant however, refused this offer of assistance stating as follows:

> "Your Honor, I have to beg to refuse counsel and exercise my prerogative of acting as my own attorney. I cannot accept counsel." (Record page 19a).

It is difficult to see how the defendant could have more clearly evidenced his intention of waiving his right to counsel.

Johnson vs. Zerbst, 304 U. S. 458;

Commonwealth ex rel. Shultz vs. Smith, 139 Pa. Super. 357;

Commonwealth vs. Jester, 256 Pa. 441.

The Supreme Court of the United States has defined a waiver as follows:

> "A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. The determination of whether there has been an intelligent waiver of the right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience and conduct of accused".
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> *Johnson vs. Zerbst*, 304 U. S. 458, 465.

That a defendant in a criminal case may waive his right to the assistance of counsel is well settled,

> *Johnson vs. Zerbst*, supra, 304 U. S. 465;
>
> *Commonwealth vs. Jester*, supra;

and whether or not the accused has actually waived his right is a matter for the trial Court,

> *Johnson vs. Zerbst*, supra;
>
> *Commonwealth ex rel. Shultz vs. Smith*, supra;

whose decision in the matter will not be reversed except for abuse of discretion.

> *Commonwealth ex rel. Shultz vs. Smith*, supra.

It is contended by the Commonwealth that the learned trial judge did not abuse his discretion. The relevant circumstances of this case manifest that the defendant was fully aware of his rights and deliberately chose to waive them. He was ar-

rested over five months prior to his trial, and was freed on bail for action of the August Term of the Court after a preliminary hearing at which he had counsel. (See Record pages 5a and 13a). He knew for over five months that his case was to be before the Court in the August Sessions. Accused is an intelligent individual, a graduate of an Osteopathic College, and for years maintained and presided over an institution for the care of the sick. The charges, he knew, grew out of and were concerned with this very institution.

The Commonwealth had procured the presence of witnesses, some from distant sections of the State, for the term of Court for which defendant was held by the Alderman as a result of the preliminary hearing.

Under these circumstances, the accused cannot be heard to say he did not voluntarily and of his own accord determine that he desired to proceed to trial without counsel.

Such being the fact, the learned Court below properly permitted the trial to proceed. In fact the Court would not have been justified in imposing counsel on the defendant against his will.

14 Ann. Jurisprudence, 884 Sec. 169;

State vs. Townley, 149 Minn. 5, 182 N. W. 773;

17 ALR 253, Writ of Certiorari denied, 257 U. S. 643, 66 L. Ed. 413.

The learned Court therefore did not err in finding that the defendant waived his right to counsel.

The sixth, seventh and eighth assignments of error relate to the refusal of the learned Court to enlarge and correct the record.

It is contended that there is no merit to these assignments. The record as compiled is complete and shows that the defendant did receive a fair trial. The assignments, however, charge that the Court below made up a false record. This charge is refuted by the record itself.

Krug vs. Peale, 35 Pa. Super. 1, 9.

The only way these assignments of error could be sustained would be to impeach the record and attack the veracity of the trial judge.

Doylestown Distilling Company's Application, 9 Pa. Super. 96, 99.

In the *Doylestown Case* supra, the Superior Court stated, at page 99:

> "We have said enough to show that the assignments of error cannot be sustained without impeaching the record, which, of course, we cannot do."

In the *Krug Case*, supra, the Superior Court stated in reference to Appellant's charge that the record was not a true one as follows:

> "We are now asked to convict him (the trial judge) of the palpable disregard of his duty on the assertion and argument of the learned counsel for the defendant. This we cannot do."

See also *Dental Mfgr. Supply Co. vs. Southern Ry. Co.*, 82 Pa. Super. 558, 561 where it is held that "generally speaking the trial judge is the ultimate

arbiter as to what constitutes the record". It is submitted that the learned Court properly exercised his judicial function in refusing defendant's rule to "enlarge and correct" the record.

The ninth assignment of error cannot have any merit. The defendant having waived his right to counsel, cannot allege what counsel would have done had he had counsel. Furthermore, the record discloses that the defendant's rights were adequately safeguarded by the trial judge.

Defendant in his brief (page 12) attacks his conviction of "unlawfully operating a hospital or private nursing home". But nowhere does defendant assign as error his conviction under this count except by inference in those assignments wherein he complains that he was denied a fair trial and was deprived of his constitutional rights. No assignment of error based on the Court's charge in reference to this offense is made by defendant. (See Assignments of Error, Appellant's Brief, pages 4 to 8 inclusive.) The record discloses that there was abundant testimony to support defendant's conviction on this charge, and it is submitted that what is said in Appellee's Argument in refutation of the assertions concerning a fair trial apply to this further contention of the defendant.

The Court in the exercise of its discretion may order two or more separate indictments against the same defendant to be tried at the same time.

2 Sadder Criminal Procedure in Pennsylsylvania, 2nd Ed. Section 518, 580;

Commonwealth vs. Egan, 113 Pa. Super. 375, 384.

It therefore is respectfully submitted that the judgment of the learned Court below be affirmed.

Respectfully submitted,

JOHN E. BRENNEMAN,
District Attorney,
HAROLD B. RUDISILL,
Assistant District Attorney,
Attorneys for Appellee.

Certificate

We hereby certify that the cases herein cited from other than the Official Reports of the Supreme and Superior Courts of Pennsylvania, are not reported therein.

JOHN E. BRENNEMAN,
HAROLD B. RUDISILL,
Attorneys for Appellee.